

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MB FINANCIAL BANK, N.A., a national banking association,	)	
	)	
	)	
Plaintiff,	)	No. 04 C 0893
	)	
-vs-	)	Judge Manning
	)	
PLANET AIRWAYS, INC., a Florida corporation,	)	
TRANS CONTINENTAL AIRLINES, INC., a Florida	)	Magistrate Judge Mason
corporation, and LOUIS J. PEARLMAN,	)	
	)	
Defendants.	)	

**MOTION OF PLAINTIFF MB FINANCIAL BANK, N.A.  
FOR REINSTATEMENT OF CASE DISMISSED PURSUANT TO  
SETTLEMENT AND FOR JUDGMENT AGAINST PLANET AIRWAYS, INC.,  
TRANS CONTINENTAL AIRLINES, INC. AND LOUIS J. PEARLMAN**

MB Financial Bank, N.A., a national banking association ("MB"), by its attorneys, Lupel Weininger LLP, moves the Court, to reinstate the case and for entry of a judgment in its favor and against Planet Airways, Inc, a Florida corporation ("Planet"), Trans Continental Airlines, Inc., a Florida corporation ("Trans"), and Louis J. Pearlman ("Pearlman"). In support hereof, MB states as follows.

1. MB brought this action on March 30, 2004 to collect sums due under made a Term Promissory Note ("Note") executed by Planet in connection with a loan for the refinancing of two Boeing 727 jet aircraft (the "Loan"). The Loan was unconditionally guaranteed by Trans and Pearlman. Planet defaulted on the Loan by failing to make the installments due and MB declared a default and accelerated the unpaid balance of the Note.

2. On May 25, 2005, MB, Planet, Trans and Pearlman entered into a Settlement, Loan Modification and Forbearance Agreement (“Settlement Agreement”). A copy of the Settlement Agreement is attached as **Exhibit 1**.

3. Pursuant to the Settlement Agreement the parties entered into a Stipulation and an Agreed Order of Dismissal Pursuant to Stipulation (“Agreed Order”). The Stipulation is attached as **Exhibit 2** and the Agreed Order as **Exhibit 3**.

4. The Settlement Agreement and the Stipulation were filed with the court on July 8, 2005 as exhibits to MB’s motion for entry of the Agreed Order. ( Docket #75 )

5. On July 14, 2005, pursuant to MB’s motion, the Agreed Order was entered which provided:

- a. Plaintiff’s Amended Complaint is dismissed, subject to the terms of the Stipulation and Settlement Agreement;
- b. The Counterclaim of Trans Continental Airlines, Inc. and Louis J. Pearlman is dismissed with prejudice; and
- c. The Court retains and reserves jurisdiction of this action and the parties hereto for purposes of enforcing the Stipulation and the Settlement Agreement.

6. Under the Stipulation and the Settlement Agreement, Planet, Trans and Pearlman agreed that upon a “Forbearance Termination Event,” after notice and an opportunity to be heard, “the Court shall enter Judgment against Planet, Trans and Pearlman jointly and severally in an amount equal to the unpaid Obligations.” (Stipulation, ¶ 3)

7. Under the Settlement Agreement the “Loan Documents” include the Note and Loan Agreement and all capitalized terms in the Settlement Agreement have the same meanings given to those terms in the Loan Documents. (Settlement Agreement, ¶ 1)

8. “Obligations” is defined in pertinent part under the Loan Agreement<sup>1</sup> as:

“Obligations” shall mean all payment and performance obligations of the Borrower under the Loan Documents, including, without limitation, the outstanding principal amounts of the Loan together with all accrued and unpaid interest thereon, all other amounts owed to the Lender by the Borrower hereunder, under any other Loan Document or under any instrument executed in connection herewith, plus all amounts expended by the Lender or for which the Lender may have incurred direct or contingent liability in connection with enforcement of this Agreement...

9. Under the Settlement Agreement a Forbearance Termination Event occurs, for among other reasons, a failure of Planet. Trans or Pearlman to “make all timely payments under the Note.” (§ 9(c))

10. In addition, upon a Forbearance Termination Event, MB may reinstate the lawsuit and obtain entry of a judgment pursuant to the Stipulation. (§ 11(b))

11. The Stipulation provided that the amount of the Obligations to be included in the Judgment shall be supported by the affidavit of MB and shall include the unpaid balance of the Note, all accrued but unpaid interest, both regular and default interest, late charges and attorneys’ fees. (Stipulation, § 3)

12. Planet, Trans and Pearlman waived (i) all notices of default, (ii) right to trial by jury and (iii) every defense which they may have to any action by MB to enforce the Settlement Agreement and the Stipulation. (Settlement Agreement, §§ 12(b) and (c))

13. A Forbearance Termination Event occurred, when neither Planet, Trans nor Pearlman paid the amount due under the Note on November 25, 2006 or thereafter. Although not required to do so, MB provided Planet, Trans and Pearlman with a notice of default but they still failed to pay. (See Affidavit of Dennis Roesslein, attached as **Exhibit 4** in support of this Motion, §§ 11 and 12.)

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<sup>1</sup> The Loan Agreement was filed as Exhibit 2 to the Complaint.

14. The aggregate amount of the Obligations to be included in the Judgment is \$3,499,635.94 as of January 17, 2007 as described in the Roeslein Affidavit. Interest continues to accrue thereafter in the amount of \$1,058.94 each day.

WHEREFORE, MB requests that the Court reinstate the case and enter Judgment in its favor and against Planet Airways, Inc., Trans Continental Airways, Inc. and Louis J. Pearlman, jointly and severally in the amount of \$3,499,635.64, with interest at the per diem rate of \$1,058.94 after January 17 until judgment.

MB FINANCIAL BANK, N.A.

By: /s/ Michael Weininger  
One of Its Attorneys

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### **CERTIFICATE OF SERVICE**

Under penalties as provided pursuant to 28 U.S.C. § 1746, the undersigned certifies that on January 19, 2007, she caused a copy of the foregoing **Motion for Reinstatement of Case Dismissed Pursuant to Settlement and for Judgment Against Defendants** to be served on:

- (i) the Filing Users listed below pursuant to ECF:

Daniel P. Dawson  
Nisen & Elliott, LLC  
200 W. Adams St., Suite 2500  
Chicago, IL 60606  
[ddawson@nisen.com](mailto:ddawson@nisen.com)

Martin W. McManaman  
Lowis & Gellen  
200 W. Adams St., Suite 1900  
Chicago, IL 60606  
[martym@lowis-gellen.com](mailto:martym@lowis-gellen.com)

- (ii) the party who is not a Filing User listed below pursuant to LR 5.5 by depositing a copy of same with proper postage prepaid in the U.S. Mail at 30 N. LaSalle St., Chicago, Illinois before 5:00 p.m. on January 19, 2007:

**None**

/s/ Christine Potter